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| EXAMINER |
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WASSUM, LUKE S

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| ART UNIT | PAPER NUMBER |
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2167

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/932,070

Applicant(s)

BUIL ET AL

Examiner

Luke S. Wassum

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-20 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 28 April 2006 has been entered.

### ***Response to Amendment***

2. The Applicants' amendment, filed 28 April 2006, has been received, entered into the record, and considered.

3. As a result of the amendment, claims 1 and 11 have been amended, and new claims 14-20 have been added. Claims 1-20 are now pending in the application.

*The Invention*

4. The claimed invention is a system for browsing a collection of information units, wherein information units are randomly presented to the user, based on whether or not they meet user-defined attribute criteria. One embodiment of the invention is a system for distributing music or video files over the Internet.

*Priority*

5. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in the EPO on 28 July 2000. A claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said application, since the United States application was filed more than twelve months thereafter.

*Drawings*

6. The Applicants new formal drawings, filed 17 March 2005, are acknowledged.

*Claim Objections*

7. Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 16 contains a limitation identical to that in the last limitation of parent claim 14.

*Claim Rejections - 35 USC § 112*

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 18 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

10. Regarding claims 18 and 20, these claims include the limitation that the mode of the skip operation includes frequency of skip and duration of skip. However, there is no disclosure of such subject matter in the specification.

*Claim Rejections - 35 USC § 102*

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-5, 9 and 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by **Cluts** (U.S. Patent 5,616,876).

13. Regarding claim 1, **Cluts** teaches a system for browsing a collection of information units as claimed, comprising presentation means for presenting at least one of said information units (see discussion of the ability to listen to songs, col. 4, lines 38-54) via audio or video playback (see col. 4, lines 55-58), and attribute means for associating a respective one of said information units with an attribute value (see discussion of the classification of content, col. 14, lines 28-50) for a plurality of attributes (see disclosure of different style categories, col. 14, lines 46-49; see also disclosure of

attributes in the form of categories '1960's', '1970's', 'British Invasion', etc, and associated attribute values 1, 1, 7, etc., as well as additional attributes in the form of subcategories 'New York City Rap', 'Los Angeles Rap', 'Male Rap', etc., col. 15, lines 26-55), wherein the system comprises random selection means for randomly selecting a unit for presentation whose attribute value meets a criterion (see col. 18, lines 51-54), the selection and presentation being made without interaction by a user based on the plurality of attributes (see disclosure that the user selects a seed song or initial condition from which the system automatically and without user intervention selects a song that is 'similar', col. 14, lines 12-27; see also drawing Figures 5-11).

14. Regarding claim 11, **Cluts** teaches a method of browsing a collection of information units as claimed, comprising a step of presenting an information unit from said collection (see discussion of the ability to listen to songs, col. 4, lines 38-54) and a step of associating a respective information unit with an attribute value for a plurality of attributes (see discussion of the classification of content, col. 14, lines 28-50; see also disclosure of different style categories, col. 14, lines 46-49; see also disclosure of attributes in the form of categories '1960's', '1970's', 'British Invasion', etc, and associated attribute values 1, 1, 7, etc., as well as additional attributes in the form of subcategories

'New York City Rap', 'Los Angeles Rap', Male Rap', etc., col. 15, lines 26-55), wherein the method comprises a step of automatically randomly selecting and presenting, without interaction by a user based on the plurality of attributes, audio and video media content of a unit from said collection of information units whose attribute values meet a criterion for said plurality of attributes (see col. 18, lines 51-54; see also disclosure of audio and video content, col. 4, lines 55-58; see also disclosure that the user selects a seed song or initial condition from which the system automatically and without user intervention selects a song that is 'similar', col. 14, lines 12-27; see also drawing Figures 5-11).

15. Regarding claim 14, **Cluts** teaches a system for browsing a collection of information units as claimed, comprising:

- a) attribute means for associating information units with an attribute value for a plurality of attributes and with at least one mutually independent attribute value (see disclosure of the association of one or more styles and associated weightings with songs, col. 14, lines 28-50; see also disclosure that administrative information, such as title, artist, album, etc. is associated with songs, col. 15, lines 14-25);



b) random selection means for randomly selecting at least one information unit

(see col. 18, lines 51-54) based on said plurality of attributes (see discussion of the classification of content, col. 14, lines 28-50; see also disclosure of

different style categories, col. 14, lines 46-49; see also disclosure of

attributes in the form of categories '1960's', '1970's', 'British Invasion', etc,

and associated attribute values 1, 1, 7, etc., as well as additional attributes

in the form of subcategories 'New York City Rap', 'Los Angeles Rap', Male

Rap', etc., col. 15, lines 26-55) and sending said at least one information unit

to a presentation means for playing said at least one information unit (see

discussion of the ability to listen to songs, col. 4, lines 38-54), where an

attribute value for said at least one information unit meets a criterion (see

discussion of the classification of content, col. 14, lines 28-50; see also

disclosure of different style categories, col. 14, lines 46-49; see also

disclosure of attributes in the form of categories '1960's', '1970's', 'British

Invasion', etc, and associated attribute values 1, 1, 7, etc., as well as

additional attributes in the form of subcategories 'New York City Rap', 'Los

Angeles Rap', Male Rap', etc., col. 15, lines 26-55); and

c) user-operable hold means for holding an attribute value of a currently selected

unit as a criterion for subsequent selections (see disclosure that the

attributes of the current [seed] song are used in selecting subsequent songs through the use of the 'more like' function, col. 14, lines 12-27) wherein holding said mutually independent attribute value will not affect a state of another attribute value (see disclosure of the association of one or more styles and associated weightings with songs, col. 14, lines 28-50; see also disclosure that administrative information, such as title, artist, album, etc. is associated with songs, col. 15, lines 14-25).

16. Regarding claims 2 and 12, **Cluts** additionally teaches a system and method comprising a user-operable means for holding an attribute value of a currently selected unit as a criterion for subsequent selections (see disclosure that subsequent selections can be based upon the attributes of a currently selected information unit through the use of the 'More Like' function, col. 14, lines 12-27).

17. Regarding claim 3, **Cluts** additionally teaches a system wherein said attribute value is defined with respect to a first attribute, said attribute means being adapted to determine a set of valid attribute values for a further attribute in dependence on said criterion (see disclosure of a first attribute value "Rock", and the set of valid attribute

values of a further attribute "1970s Rock", "1980s Rock", "1990s Rock", "Soft Rock", "Acid Rock", "Heavy Metal", etc., at col. 20, lines 33-44; see also col. 21, lines 57-62).

18. Regarding claim 4, **Cluts** additionally teaches a system wherein said first attribute representing a genre of said information units and said further attribute representing a sub-genre of said information units (see disclosure of a first attribute value "Rock", and the set of valid attribute values of a further attribute "1970s Rock", "1980s Rock", "1990s Rock", "Soft Rock", "Acid Rock", "Heavy Metal", etc., at col. 20, lines 33-44; see also col. 21, lines 57-62).

19. Regarding claim 5, **Cluts** additionally teaches a system wherein said information units comprise audio and/or video information (see col. 4, line 55 through col. 5, line 2).

20. Regarding claim 9, **Cluts** additionally teaches a system wherein the attribute means is adapted to determine a distance between a pair of attribute values, the random selection means being capable of selecting a unit from units whose attribute values have a relatively large distance to attribute values of an earlier selected unit (see col. 16, lines 1-20).

21. Regarding claim 13, **Cluts** additionally teaches a computer program product for causing a programmable device, when executed on said device, to constitute a system as claimed in claim 1 (see col. 5, lines 3-55).

22. Regarding claim 15, **Cluts** additionally teaches a system wherein said random selection means selects and sends without interaction by the user (see disclosure that the user selects a seed song or initial condition from which the system automatically and without user intervention selects a song that is 'similar', col. 14, lines 12-27; see also drawing Figures 5-11).

23. Regarding claim 16, **Cluts** additionally teaches a system further comprising user-operable hold means for holding an attribute value of a currently selected unit as a criterion for subsequent selections (see disclosure that the attributes of the current [seed] song are used in selecting subsequent songs through the use of the 'more like' function, col. 14, lines 12-27) wherein holding said mutually independent attribute value will not affect a state of another attribute value (see disclosure of the association of one or more styles and associated weightings with songs, col. 14, lines 28-50; see also disclosure that administrative information, such as title, artist, album, etc. is associated with songs, col. 15, lines 14-25).

*Claim Rejections - 35 USC § 103*

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

26. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under

37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

27. Claims 6-8 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cluts** (U.S. Patent 5,616,876) as applied to claims 1-5, 9 and 11-16 above, and further in view of **Dunning et al.** (U.S. Patent Application Publication 2003/0229537).

28. Regarding claims 6 and 17, **Cluts** teaches a system for browsing a collection of information units substantially as claimed.

**Cluts** does not explicitly teach a system further comprising user-operable skip means for controlling the random selection means to abort the presentation of the currently selected unit and to skip to a randomly selected alternative unit whose attribute value meets said criterion.

**Dunning et al.**, however, teaches a system further comprising user-operable skip means for controlling the random selection means to abort the presentation of the currently selected unit and to skip to a randomly selected alternative unit whose attribute value meets said criterion (see paragraphs [0117], [0140] and [0253]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the ability to skip units, since a user might not enjoy the unit being presented, and this functionality would allow the user to avoid being forced to endure the entire presentation (see paragraph [0256]).

29. Regarding claims 7, 8 and 18-20, **Cluts** teaches a system for browsing a collection of information units substantially as claimed.

**Cluts** does not explicitly teach a system wherein said skip means is capable of removing at least one criterion in dependence on a mode of operation of said skip means, said removing being determined by an iterated and/or prolonged operation of said skip means.

**Dunning et al.**, however, teaches a system wherein said skip means is capable of removing at least one criterion in dependence on a mode of operation of said skip means, said removing being determined by an iterated and/or prolonged operation of said skip means wherein the mode of operation of the skip means is selected from the group consisting of frequency of skip means operation and duration of skip means operation (see disclosure that the user's activities, including the tracks that are skipped, are logged, and the logged actions are then used to modify the preferences that are used as criteria for subsequent selection of music tracks, paragraphs [0117], [0140] and [0253]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide for the removal of criteria based on a user's skipping of tracks, since the assumption is that if a user skips a track, he/she did not enjoy that track, and if the user skips many tracks with a particular common characteristic, then it would be a good assumption that the user does not enjoy tracks that share that characteristic (see paragraph [0256]).



*Allowable Subject Matter*

30. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

31. The following is a statement of reasons for the indication of allowable subject matter:

The present invention is directed to a system for browsing a collection of information units, wherein information units are randomly presented to the user, based on whether or not they meet user-defined attribute criteria. One embodiment of the invention is a system for distributing music or video files over the Internet, and wherein a randomization function is provided through a slot-machine-like graphical user interface.

The closest prior art of record, **Cluts** (U.S. Patent 5,616,876) teaches an interactive network that provides music to subscribers, and includes a "more like" function that allows subscribers to use a seed song to identify other songs that are similar to the seed song and add the new songs to the playlist.

However, **Cluts** fails to anticipate or render obvious the recited feature of a means for displaying a simulation of a slot machine having at least one column comprising a plurality of randomly selectable attribute values, wherein each of the at least one column corresponds to an attribute, and activation means for activating the random selection of an attribute value in at least one of the at least one column, the operation of said simulated slot machine representing said random selection, as in dependent claim 10.

### *Response to Arguments*

32. Applicant's arguments filed 28 April 2006 have been fully considered but they are not persuasive.

33. Regarding the Applicants' argument that the prior art of record fails to teach a plurality of attributes, the examiner respectfully disagrees.

The disclosure at col. 15, lines 26-55 et seq., includes numerous 'styles' of music, and an associated 'weight'. These disclosures are analogous to the applicants' claim of

attributes and attribute values, since the weight determines the degree to which a user prefers music that conforms to the specified 'style'.

Furthermore, the disclosure of subcategories at col. 15, lines 47-55 is analogous to the claimed invention as disclosed in the Applicants' specification with regard to 'genre' and 'style, or sub-genre' attributes, page 2 lines 23-33 and as illustrated in drawing Figure 2. Furthermore, the disclosure of the 'style equalizer' also discloses multiple attributes, since each slider corresponds to some specific 'style' whose weight the user may increase or decrease depending upon the user's like or dislike of the specific 'style', col. 20, lines 21-65, and drawing Figure 11. These 'styles' correspond to the Applicants' claimed 'attributes'.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luke S. Wassum whose telephone number is 571-272-4119. The examiner can normally be reached on Monday-Friday 8:30-5:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Cottingham can be reached on 571-272-7079. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

In addition, INFORMAL or DRAFT communications may be faxed directly to the examiner at 571-273-4119. Such communications must be clearly marked as INFORMAL, DRAFT or UNOFFICIAL.

Customer Service for Tech Center 2100 can be reached during regular business hours at (571) 272-2100, or fax (571) 273-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Luke S. Wassum  
Primary Examiner  
Art Unit 2167

lsw  
18 July 2006